

Application No. 10/644,426
Amendment dated May 30, 2006
Reply to Office Action of February 27, 2006

Docket No.: 60680-1638

REMARKS

Applicants have carefully reviewed the Office Action mailed February 27, 2006. In response to the Office Action, Applicants have amended claims 1, 4, 5 and 20, cancelled claim 11, and added new claims 24-26. By way of this amendment, no new matter has been added. Claims 3, 9-10, and 12-13 were previously cancelled. Accordingly, claims 1, 2, 4-8, and 14-26 remain pending in this application. At least for the reasons set forth below, Applicants respectfully traverse the foregoing rejections. Further, Applicants believe that there are also reasons other than those set forth below why the pending claims are patentable, and reserves the right to set forth those reasons, and to argue for the patentability of claims not explicitly addressed herein, in future papers. Applicants respectfully request reconsideration of the present application in view of the above amendment, the new claims, and the following remarks.

Applicants would like to thank the Examiner for the courtesy of a teleconference on May 24, 2006, where the Examiner clarified that claim 6 was rejected over *Bryk* in view of *Stephenson*.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 2, 4, 5, 7, 11, 20-22 were rejected under 35 U.S.C. 102(b) as being anticipated by *Bryk* (U.S. Patent No. 3,622,194). Applicants respectfully traverse the rejection.

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants note that independent claim 1 has been amended to include the limitation that "all portions of said second axial layer are selectively positioned radially outward from said isolator." Applicants also note that independent claim 20 has been amended to include the limitation of an "isolator selectively in contact with said upper base." Support for these newly added limitations can be found in at least paragraph [0022], and FIGS. 1, 4 and 5.

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With these amendments, the teachings of Bryk do not anticipate independent claims 1 and 20. Applicants specifically draw attention to FIGS. 1-5 and to column 1, lines 26-30, and column 2, lines 33-34 of Bryk to illustrate that Bryk teaches that insulator 28 contacts sleeve 54. Accordingly, Bryk does not teach or suggest all elements positively recited in independent claims 1 and 20, as required in *Verdegaal Bros.*

Dependent claims 2, 4, 5, 7, 11, 21-22 teach independently patentable subject matter, although they are also patentable merely by being dependent on an allowable base claim. As an example, claim 5 recites "wherein said second tubular member has a dimple for engaging a fastener." These teachings are not taught in Bryk. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

Claim Rejections – 35 U.S.C. § 103

Claims 8 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bryk* in view of *Schmidt* (U.S. Patent No. 3,390,709). Applicants respectfully traverse the rejection.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j).

All Elements

The remarks presented above with respect to the §102 rejection are equally applicable here. Specifically, the inadequacy of Bryk to teach every element of independent claim 1 by not teaching that "all portions of said second axial layer are selectively positioned radially outward from said isolator," is also fatal to the Examiners §103 rejection. Additionally, Schmidt does not teach that "all portions of said second axial layer are selectively positioned radially outward from said isolator," and therefore, cannot make up for the inadequacy described above.

Furthermore, Schmidt does not teach an "isolator selectively in contact with said upper base," as positively recited in independent claim 20, and not found in Bryk, as detailed above. Therefore, the combination of Bryk and Schmidt does not teach every limitation of independent claims 1 and 20, as required in *In re Royka*. Furthermore, dependent claims, 8 and 23, being

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dependent upon independent claims 1 and 20, are patentable by being dependent on an allowable base claim.

Proper Motivation for the Proposed Combination

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990), *W.L. Gore and Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Moreover, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

The Examiner has combined the motor vehicle body mount of Bryk and the wire mesh of Schmidt to reject claims 8 and 23. As a motivation for the proposed combination, the Examiner has provided "as material selection is a design choice," and "wire mesh is desirable because it has a stable spring rate and good load carrying ability in the axial direction." However, neither of these purported 'motivations' point to an 'objective reason to combine the teachings of the references,' as required in *In re Mills*. Furthermore, the Applicants cannot locate any motivation within either Bryk or Schmidt for the proposed combination.

Proposed Combination Changes the Principle of Operation of Bryk

If the proposed modification makes the prior art reference wholly unsuitable for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). If the proposed modification or combination of references would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Applicants agree with the Examiner that Schmidt teaches a "wire mesh is desirable because it has a stable spring rate and good load carrying ability in the axial direction." However, the motor vehicle body mount of Bryk is intended to reduce vibrations, and utilizes a

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rubber. (Bryk, column 2, lines 27-30). Indeed, neither Bryk or Schmidt indicate whether a wire mesh would provide the vibration isolation desired in Bryk. (See Bryk, column 1, lines 4-10). Since there is no teaching to demonstrate that a wire mesh would provide the vibration isolation desired in Bryk, one of skill in the art would recognize that replacing the rubber insulators of Bryk with wire mesh as taught in Schmidt would make Bryk 'wholly unsuitable for its intended purpose.' Therefore, the Examiner has failed to establish a *prima facie* case for combining Bryk and Schmidt, as defined in *In re Gordon*.

Furthermore, since the material of Schmidt is taught as being a metal having a stable spring rate, one of skill in the art would recognize that metal springs with a stable spring rate provide very little damping. One of skill in the art would also understand that rubber is inherently self-damping (See US Patent 6,499,729) which is a desirable characteristic of a body mount, and that eliminating a significant portion, if not all, of the damping of the mount would "change the principle of operation," of the mount of Bryk thus running afoul of *In re Ratti*. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 6, and 14-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bryk in view of Stephenson. Applicants respectfully traverse the rejection.

Blueprint

Applicants respectfully traverse the 103(a) rejections because there is no suggestion, motivation, or objective reason to combine the cited references. "If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453 at 1457 (Fed Cir. 1998). "Rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be 'an illogical and inappropriate process by which to determine patentability'." *Id.* quoting *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996).

The Examiner has combined motor vehicle body mount of Bryk and the lip of Stephenson to reject the claims. As a motivation for the proposed combination, the Examiner has provided "[t]his prevents the elastomer from spreading out to the sides and over time

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failing." However, when considering specifically FIGS. 3 and 4 of Bryk, Applicants cannot identify any possibility for the lower insulator 28 of Bryk to spread out. Importantly, when the motor vehicle body mount of Bryk is installed, the sleeve 54 contacts the lower retainer member 36. Accordingly, the insulator 28 cannot be further compressed in the axial direction to cause the lower insulator 28 of Bryk to spread out.

Furthermore, the frame 12 of the vehicle of Bryk is located above the insulator 28, and the body 60 is located above the frame 12. Therefore, the dead loading of the vehicle will not compress the isolator 28, but will compress the insulator 16, which is located between the frame 12 and the body 60. One of skill in the art would recognize that the insulator 28 may compress during dynamic loading, however, with much lower loadings as compared to the annular member 17 of Stephenson, which is not provided with a lipped member in contact with an outer periphery. One of skill in the art would recognize the need to reinforce a rubber member with greater axial loading before reinforcing a rubber member with lower axial loading. Therefore, one of skill in the art not view Stephenson as teaching a lip for reinforcing a rubber member, since the lip contacts a rubber member with lower loadings and no lip is provided for the rubber member with higher loadings.

Below are FIG. 3 from Bryk and FIG. 3 from Stephenson:

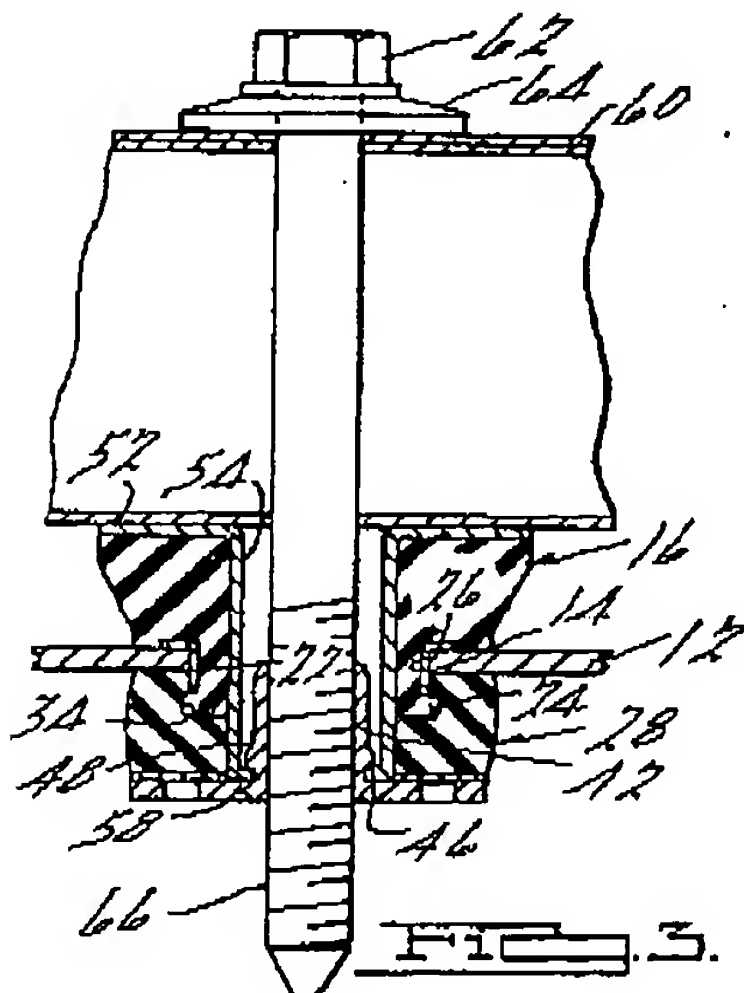


FIG. 3 from Bryk

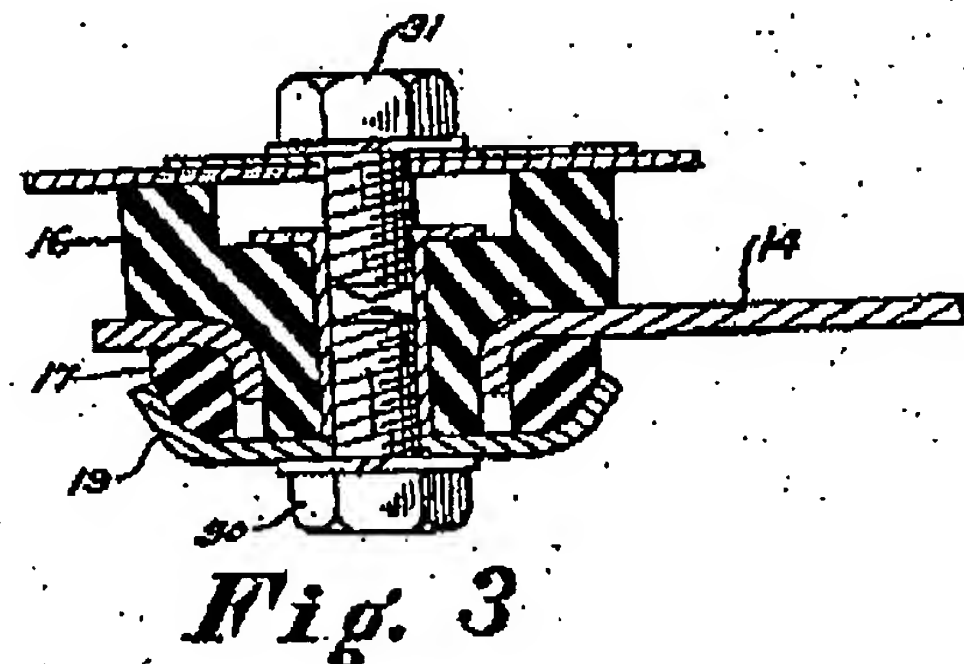


FIG. 3 from Stephenson

Importantly, Stephenson addresses the need for a lipped washer by providing:

Retaining washer 20 is a lipped washer tending to prevent the outward spreading of annular member 17. However, a flat washer will do as well if member 17 has a flat surface against which the washer abuts and is of as size to accommodate the loading.

Stephenson, Column 2, lines 38-43.

As seen in the figures above, the insulator 28 of Bryk has a flat surface against which the lower retainer 36 abuts and the insulator 28 is proportionally larger in a radial direction than the annular member 17 of Stephenson (of as size to accommodate the loading). Therefore, when one of skill in the art, with Bryk and Stephenson in hand, considers making the proposed combination, one of skill would interpret the teachings of Stephenson to indicate that no advantage would result from combining the lip of Stephenson with the motor vehicle body mount of Bryk, since Stephenson teaches the motor vehicle body mount of Bryk "will do as well" without the addition of the lip of Stephenson.

Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bryk* in view of *Schmidt* (U.S. Patent No. 3,390,709). Applicants respectfully traverse the rejection.

Applicants note that the Examiner has rejected dependent claim 19, which depends from claim 14, stating that "Bryk is relied upon as above in paragraph 7." Paragraph 7 of the Office Action mailed February 27, 2006 is the 103 rejection of claims 14-18 over Bryk in view of Stephenson, addressed above, where the Examiner stated that "Bryk does not disclose the use of a lip on the upper base." The Examiner does not rely upon Schmidt for an upper base or a lip. Therefore, the Examiner has admitted that, Bryk and Schmidt do not disclose all elements of dependent claim 19, as required in *In re Royka*.

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Stephenson et al.* in view of *Peterson*. Applicants respectfully traverse the rejection.

"The examiner must show reasons that the skilled artisan, confronted with the same problem as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 47 USPQ2d, at 1458 (Fed. Cir. 1998)

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A case of obviousness requires that there be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See MPEP § 2143; *In re Linter*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990), *W.L. Gore and Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1966). Moreover, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

No Motivation

Applicants respectfully traverse the 103(a) rejections because there is no suggestion, motivation, or objective reason to combine the cited references. "If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue." *In re Rouffet*, 47 USPQ2d 1453 at 1457 (Fed Cir. 1998). "Rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be 'an illogical and inappropriate process by which to determine patentability'." *Id.* quoting *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996).

The Examiner has cited multiple motivations for combining Stephenson with the first and second tubular member construction of Peterson. These advantages are discussed, in turn, below. Applicants respectfully submits that these purported advantages would not motivate one skilled in the art to combine the references for at least the reasons below.

Fastener Screwed from Both Sides

The Examiner states that one skilled in the art would be motivated, with Stephenson in hand, to seek out Peterson to find a mounting that does not require a fastener that must be screwed from each side (See Office Action mailed February 27, 2006, paragraph 9; Stephenson, FIG. 3).

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Apparently, the Examiner is under the assumption that the first and second tubular members of Peterson provide a mount where the fastener not required to be manipulated from both ends when tightened. "When the incentive to combine the teachings of the references is not readily apparent, it is the duty of the examiner to explain why combination of the reference teachings is proper." *Ex parte Skinner*, 2 USPQ2d 1788, 1790 (Bd. Pat. App. & Int., 1986). The Examiner is respectfully requested to explain in greater detail how the fastener of Peterson can be tightened by only turning head 52 of fastener 20. Additionally, the Examiner is specifically requested to explain how this 'fastening from one side' is different from the fastener provided in Stephenson.

As detailed in column 5, lines 1-9 of Peterson, the fastener 20 is inserted through the first and second tubular members and then the fastener 20 is engaged with nut 51. Therefore, Peterson appears to provide a fastener that must be tightened with opposing forces exerted through nut 51 and head 52 in order to tighten fastener 20. Interestingly, this is just the type of fastener that Stephenson mentions in column 1, lines 38-50 when Stephenson discusses fasteners that are associated with alignment problems. The Examiner has not explained how any portion of the mount of Peterson (and specifically the nut 51) will resist rotation as the fastener 20 is rotated. One of skill in the art would recognize that generally, a technician installing fastener will have access to only the head 52 of fastener 20 at some mounting locations between an automobile body and frame.

Therefore, one skilled in the art, with Stephenson in hand, would not be motivated to seek out a reference to teach a mounting that does not require that a fastener be screwed from each side, as asserted by Examiner, as this teaching is contained in Stephenson.

Additionally, the Applicants note that the Examiner has made a combination of the mount of Stephenson with the first and second tubular member construction of Peterson. Therefore, even if there were proper motivation to combine the fastener of Peterson with the mount of Stephenson, this combination would not include the first and second tubular member construction of Peterson.

Single Fastener

The Examiner also mentions that the device of Peterson requires only a single fastener when providing motivation to combine Peterson and Stephenson. As best described in column

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1, lines 38-50, Stephenson solves the Examiner's alignment issue (discussed below) by providing a mount that is assembled in two parts. First the lower portion of the mount is assembled onto the chassis brackets 14 of an automobile with a first fastener. Then holes in the body 32 may be aligned with the mounts and a second fastener used to secure the body to the mount. Importantly, Stephenson presents this two-part mount as a solution to the difficulties in using a single bolt. (See Column 1, lines 40-44) that must be inserted through a mount as all pieces of the mount, the holes in each bracket and the holes in the body are aligned. Therefore, Stephenson encourages one skilled in the art to **avoid** a single bolt when fastening a mount. Accordingly, Stephenson *teaches away* from the proposed combination by discouraging one of skill in the art from combining a single bolt fastener with the mount of Stephenson.

Labor Intensive

The Examiner also mentions that the mount of Stephenson would be labor intensive when compared to the mount of Peterson. At best, this purported motivation is a reason why one skilled in the art would choose Peterson instead of Stephenson, since the Examiner has not alleged that any particular feature of the mount of Stephenson is desirable in the mount produced by the combination. As mentioned above, Stephenson presents a two fastener mount that alleviates the misalignment problems associated with a single fastener mount. The Examiner has not identified any motivation within either Stephenson or Peterson for the proposed combination. Therefore, one skilled in the art would select between either Stephenson or Peterson (or other references) if a single reference could solve the problem confronting the inventor. *In re Rouffet*. Accordingly, as the Examiner has proffered a motivation that may encourage one skilled in the art to select the mount of Peterson, but the Examiner has not provided a motivation to combine the mount of Stephenson with the first and second tubular members of Peterson.

Misalignment

The examiner also states that the first and second tubular members of Peterson would prevent the mount of Stephenson "from being assembled improperly from misalignment." (Office Action mailed February 27, 2006, paragraph 9). As mentioned above, Stephenson discusses alignment problems associated with a single fastener in Column 1, lines 38-50.

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Furthermore, Stephenson *provides* a solution to alignment and would *discourage* one skilled in the art from looking further for a mount.

The Examiner is respectfully requested, in accordance with *Ex parte Skinner*, to explain how aligning the first and second tubular members of Peterson would prevent the mount of Stephenson from being "assembled improperly from misalignment". It would appear that the other items of the mount must be properly aligned in order to insert the second tubular member 14 into the first tubular member 12. The Applicants can locate no features of the first and second tubular member construction of Peterson that provides any alignment advantage that is not provided in Stephenson. Therefore, the Applicants is confused as to how the first and second tubular member construction *prevents* misalignment, and requires the requested clarification.

A detailed review of the mounts disclosed in Stephenson and Peterson does not reveal any misalignment advantages associated with Peterson that do not exist in Stephenson. To the contrary, the mount of Stephenson, either FIG. 2, or FIG. 3, is to be assembled in two steps that would seem to reduce alignment problems associated with aligning multiple items (elastomers, spacers, washers, body panels, brackets, etc.). In the first step of Stephenson, the lower portion of the mounting 15 is attached to the bracket 14 by tightening either T-shaped bolt 19 (FIG. 2) or bolt 30 (FIG. 3). In the second step, the body 28 is attached to mounting 15 by either bolt 27 (FIG. 2) or bolt 31 (FIG. 3). By teaching a two step process, misalignment problems are reduced as fewer items must be aligned when inserting a bolt therethrough.

Indeed, FIG. 2 of Stephenson requires that the T-shaped bolt 19 be interposed through 4 items (puck 17, flange 16, puck 18, and washer 20) before the nut (illustrated above as N) is threaded onto T-shaped bolt 19. However, Peterson requires that at least 7 items [item M (not named, but appearing to be an automobile body or cab), spacer 12, first elastically resilient mating ring 16, item S (not named, but appearing to be an ear extending from an automobile frame), second elastically resilient mating ring 18, spring element 100, and thimble 14] be assembled before fastener 20 can be threaded onto nut 51. Therefore, misalignment would be more likely with Peterson than Stephenson, (See Stephenson, Column 1, lines 40-44) and accordingly, one skilled in the art, with Stephenson in hand, would discard Peterson when looking for a mounting that reduces misalignment. The only mention of aligning within

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Peterson is for aligning tabs 108 that assist in engaging thimble 14 with spring element 100 *after* the 7 items mentioned are aligned for assembly.

Dimple Spring Mechanism

The examiner also states that the dimple spring mechanism 100 of Peterson would prevent the mount of Stephenson from falling apart if the fastener fails. (Office Action mailed February 27, 2006, paragraph 9).

The dimple spring mechanism of Peterson is provided to allow repeated assembly and disassembly of the mount. (Peterson, Column 2, lines 47-51, Column 4, lines 49-57). Therefore, the dimple spring mechanism 100 of Peterson **allows** the mount to be taken apart when the fastener is removed, and would presumably allow the mount to fall apart in the event of a fastener failure.

As clearly seen in FIG. 1 of Peterson, the dimple spring mechanism 100 may, through interference between holding tabs 104 and enlarged end 44, retain mating rings 16, 18 onto chassis S after failure of fastener 20. However, a close examination of Peterson reveals that failure of fastener 20 would result in separation of the automobile body M from the ear S of the automobile frame. The Examiner is reminded that the motivation provided must motivate *one skilled in the art* to make the proposed combination. The Examiner is respectfully requested, in accordance with *Ex parte Skinner*, to explain exactly why one skilled in the art would desire a mount that does not fully fall apart in the event of a fastener failure that allows an automobile body to separate from the chassis.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Stephenson*, as modified, in view of *Schmidt* (U.S. Patent No. 3,390,709). Applicants respectfully traverse the rejection.

Applicants note that the Examiner has rejected dependent claim 19, which depends from claim 14, stating that "Stephenson, as modified, is relied upon as above." The remarks presented above with respect to the §103 rejection of Stephenson in view of Peterson are equally applicable here. Specifically, the inadequacy of Stephenson and Peterson to provide any motivation for the proposed combination is also fatal to this §103 rejection. Additionally, the Examiner's motivation of "wire mesh is desirable because it has a stable spring rate and good load carrying ability in the axial direction," (Office Action mailed February 27, 2006, paragraph

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10) does not provide a motivation for the combination of the mount of Stephenson, the first and second tubular member construction of Peterson, and the knitted metal wire of Schmidt, and cannot make up for the inadequacy described above. Therefore, the proposed combination of Stephenson, Peterson and Schmidt, as required in *In re Linter*.

Conclusion

In view of the above, each of the presently pending claims in this application is in immediate condition for allowance. If, however, there are any outstanding issues that can be resolved by telephone conference, the Examiner is earnestly encouraged to telephone the undersigned representative. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe that no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 60680-1638 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

Dated: May 30, 2006

(the 27th falling on a Saturday, and the 29th being a holiday)

Respectfully submitted,

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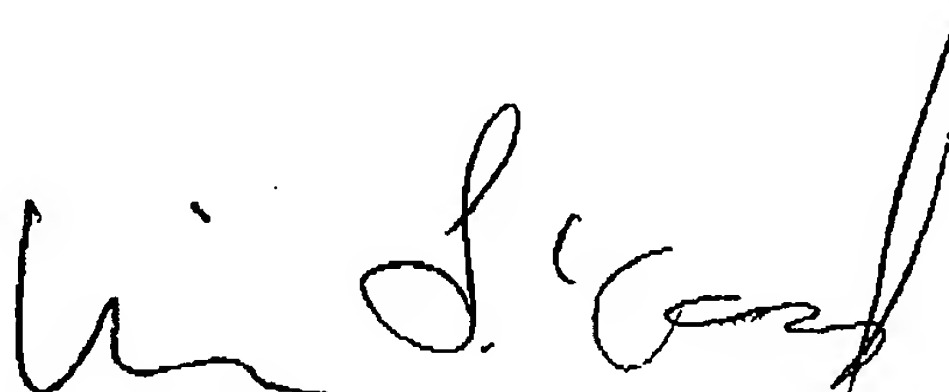
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Amendment in Response to Non-Final Office Action (17 pages)